IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 288 of 2007

DATE OF DECISION: 7.9.2007

Gurbachan Singh Jaggi

…Appellant

Versus

C.I.T. Inv. Circle 2(2), Jalandhar

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. S.K. Mukhi, Advocate,
for the assessee-appellant.

M.M. KUMAR, J.

This is assessee's appeal filed under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenging order dated 19.1.2007, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal') in ITA No. 147/(ASR)/ 1997, in respect of assessment year 1993-94 (A-1), upholding order of the Assessing Officer, dated 29.3.1996 (A-2) that the gift received by the daughter of the appellant is a taxable cash credit and addition of Rs. 1,90,000/- was fully justified. Accordingly, the order passed by the CIT(A), dated 11.12.1996 (A-3), has been set aside. The assessee-appellant has claimed that following substantial questions of law would arise for our determination:

"a. Whether, in view of peculiar facts and circumstances of the case, the ITAT was justified in concurring with the order of the A.O. thereby setting aside order of CIT(A) on the basis of

conjectures and surmises and without citing anything against the appellant on record and thereby treating a genuine gift as bogus?

b. Whether the gift given by a Non Resident out of natural love and affection to daughter of a friend for her marriage in lieu of help by grandfather to be treated as income of father?

c. Whether, on the facts and circumstances of the case, the findings of ITAT are perverse and against the evidences on record thus unsustainable in law?

d. Whether the ITAT has misdirected itself in being influenced by irrelevant factors and applying erroneous criteria while deciding the issue of genuineness of the impugned gift?

Brief facts of the case are that the assessee-appellant is a dealer in real estate being proprietor of M/s G.S. Traders. A search at his business and residential premises was carried on 17.12.1993 and accordingly notices under Section 142(1) and 143(2) of the Act were issued calling upon the assessee-appellant to furnish his reply. The Assessing Officer after enquiry from the assessee completed the assessment vide order dated 29.3.1996. Besides other discrepancies, the Assessing Officer also found that the assessee's daughter Miss Dimpy Jaggi received a gift of Rs. 1,90,000/- from Sri Natha Singh son of Shri Harnam Singh, residing at Hong Kong, with whom she has no relation. Statement of Shri Natha Singh was recorded and he specifically denied having made any gift to Miss Dimpy Jaggi.

Accordingly, the Assessing Officer made an addition of Rs. 1,90,000/- on account of bogus gift in the income of the assessee-respondent. It is appropriate to mention that certain other additions were also made in the income of the assessee-appellant on different counts, however, the same are not subject matter of challenge in the instant appeal. The Assessing Officer assessed the net taxable income as Rs. 33,79,532/- instead of Rs. 1,16,460/- mentioned in the return which was initially filed and processed under Section 143(1)(a) of the Act.

On appeal to the CIT(A), the additions made by the Assessing Officer were deleted to the extent of Rs. 27,92,685/-, including the addition of Rs. 1,90,000/- on account of gift received from Shri Natha Singh. The view taken by the CIT (A) in deleting the addition of Rs. 1,90,000/- is discernible from para 11.2 of the order, which reads as under:-

> "11.2 I have considered the facts of the case and the submissions of the ld. counsel for the assessee. I have also gone through the affidavit of S. Natha Singh and the Statement of S. Natha Singh recorded by the AO on 19.3.96. In his statement S. Natha Singh has stated that he is staying in Hong Kong for the last 30 years and the assessee is his fast friend and they studied in the school together. That he wanted to gift the money for the marriage of the assessee's daughter. That his sister and her husband are staying in the village Kokalpur in Distt. Kapurthala and he has not made any gift to them as their children are living abroad. That the gift was made

out of his NRE bank account. That he having electronic good shop in Hong Kong and having annual income of Rs. 8 lacs. That the assessee's father helped him when he went abroad and he often comes to India once or twice in a year. From these statements of S. Natha Singh, no inference can be drawn to suggest that the gift is bogus. On more or less, similar situation the addition by disbelieving the genuineness of the gift was deleted by the Hon'ble ITAT Amritsar Bench by order dated 7.6.95 in ITA No. 84 (ASR)/1990 for AY 88-89 in the case of Sh. Daljit Singh Prop. of M/s. Jaimal Singh Daljit Singh, Hoshiarpur Vs ITO, Ward-1, Hoshiarpur. The Hon'ble Tribunal extracted the observations of Hon'ble Delhi High Court in the case of CIT Vs Sunita Vachani (1990) 184 ITR 121 and then observed in para 7 as under:- …"

A bare perusal of the above would show that the CIT(A) has relied upon the decision of the Tribunal in the case of Daljit Singh (supra) as well as observations of Delhi High Court in the case of Sunita Vachani (supra).

However, on further appeal to the Tribunal by the revenue, the view taken by the CIT(A) on the issue of gift was reversed by holding as under:-

"61 With regard to this issue, we are not in agreement with the assessee that his gift needs to be accepted as genuine gift. Admittedly, there is no relationship between the donor and the donee.

Also there was no occasion for making the gift. Strikingly, the sister and brother-in-law of the donor live in the same village as that of the assessee. However, that the donor had never made and gift to them on the retest (pretext?) that their children are living abroad. Moreover the donor's annual income is only about Rs. 8 lacs and the amount gifted is a whopping sum of Rs. 1,90,000/- which is wholly incongruous with such income of the donor. When we apply the test of human probability to the facts of the present case, it does not appeal to us that a stranger having meager income of Rs. 8 lakhs P.A. would donate a sum of Rs. 1,90,000/- to a person, with whom he has no blood relation and without any specific occasion. All these facts persuade us to agree with the A.O. The learned CIT(A) has merely gone by the affidavit and the statement of the donor the mere fact that the gift was made out of NRE bank account of the donor does not help the case of the assessee. Reliance by the Tribunal in the case of Shri Daljit Singh, is also uncalled for in the presence of the decision of the jurisdictional High Court in the case of "Lal Chand Kalra" (supra). Similar is the fate of "A Rajendran and Others" (supra), relied" (supra), relied" (supra), relied" (supra), relied on the learned counsel for assessee.

> It is not possible to digest the story of the assessee. The conduct of the donor shows that there was no love lost between him and his sister and her family. Though she was living in the assessee. The donor did not have any relation with the donee. His income was not commensurate with the gift made. All this goes to show that the conclusion recorded by the Learned CIT (A) was not validly possible to the arrived at (?). Direct evidence can never be available for every thing. Sometimes, the facts speak loud and clear. Very often, like in the present case, the courts have to go through the enquiries from the attending circumstances. In the present case, the circumstances do not go in favour of the assessee. The grievance of department is justified.

We have heard learned counsel for the assessee-appellant at a considerable length and find that the appeal merits dismissal because there are categorical findings recorded by the Assessing Officer which have been duly affirmed by the Tribunal. The financial capacity of the NRI Shri Natha Singh has been found to be so inadequate that the claim made by the appellant-assessee could not at all be supported. It has been found that his monthly income in the country like Hong Kong was about Rs. 8 lacs per annum. In the teeth of this, firm finding concerning the financial capacity of the creditor and the appellant-assessee, it is not possible to hold that the money transaction claimed to have emanated from the NRI Shri Natha Singh,

friend of the assessee-appellant, had actually come from him. Therefore, we find that the appeal does not warrant admission as pure findings of fact have been recorded. Even the questions of law which have been claimed by the assessee-appellant proceed on presumption of facts which are contrary to the well based findings recorded in one tone by the Assessing Officer and the Tribunal.

For the reasons aforementioned this appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 7, 2007
Pkapoor

FIT FOR INDEXING